Quid Novi

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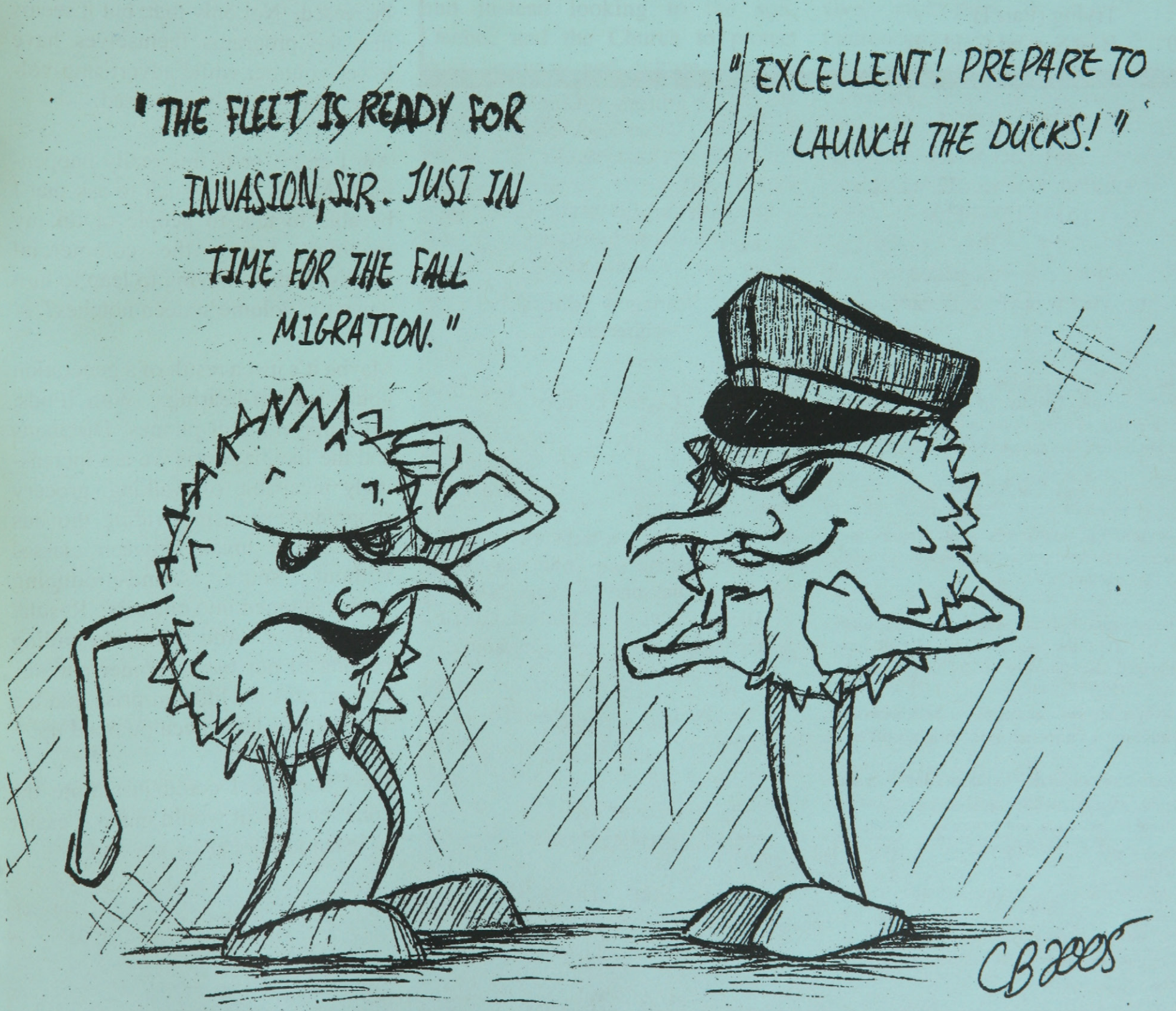

-WAR OF THE WORLDS-

In This Issue...

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Editor's Note

Perhaps the Editor's Note should be renamed the 'Gripe Column', since that seems to be the general theme this year. Not to break with tradition, here goes another rant...

Why is it, in this day and age, that TV volumes can't stay consistent? This is the first year I've had cable in my apartment, and I must say I've noticed a serious lack of sound control. While commercial breaks have always been louder than the programs, the difference in volume seems to have increased. Not only that, but it seems that the programs themselves have lower volume, while advertising volumes have steadily increased.

Am I crazy, or is this really happening? And is it too much to ask that I be able to talk to people or do my readings during the commercial breaks, without having to leap to turn down the volume sixteen notches?

Maybe it's just a result of a generation going hard-of-hearing. With iPods, MP3 players, cell phones, Discmans and the like, it seems we are increasingly incapable of walking, grocery shopping, exercising, riding the bus or taking a break between classes without some sound-producing device jammed into our ears. Result? Hearing loss. Add to this the failing hearing of our baby boomer parents, and perhaps it's little surprise that the TV volumes have been pumped up.

Or, I suppose I could just mute the commercials...it would make it easier to listen to my MP3s, anyway.

- L.M.

A Remarkable Personality Has Been Revealed

by Prof. William Tetley

Pierre Elliott Trudeau died on September 28, 2000 and much is justifiably being made over his repatriation of the Constitution. He also imposed the Canadian Charter of Rights and Freedoms, without the consent of one province - Quebec. In my view this was an error, being the ideological crutch on which Quebec separatists still lean today and a source of their continual antipathy towards his memory. The reputation of Trudeau is also decried by Quebec nationalists, because of his beginnings as a left-wing nationalist, particularly in the Asbestos Strike of 1949, where he arrived on a motorcycle, but made a useful contribution to the struggle there, as did Gérard Pelletier. Jean Marchand was the strike leader and one of the real heroes of that historic conflict.

It is not generally known that in 1955, Trudeau wrote a series of remarkable essays in *Cité Libre* on the strike and the essays formed the preface and epilogue to the seminal text on the Asbestos Strike, "La Grève de l`Amiante," published the next year. André Laurendeau, the director of *Le Devoir*, who was the most respected Quebec nationalist leader of his time, wrote a series of three editorials in *Le Devoir*, entitled "One Hundred Pages By Pierre Elliott Trudeau," criticizing and commending Trudeau's preface and epilogue. Laurendeau opened with these words: "In the preface and epilogue he has written…Mr. Pierre Elliott Trudeau provides us with a hundred pages that will be talked about for a long time to come."

Trudeau had been particularly harsh on Quebec nationalists for turning their backs on modern industry, commerce, business and education and instead looking to the soil, Quebec and the Church to protect their language and culture. Trudeau saw the Asbestos Strike, where the Church joined in (or at least Archbishop Charbonneau and the "Confédération des travailleurs catholiques du Canada" did), as a turning point in Quebec and it was in fact the beginning of the Quiet Revolution.

Laurendeau is very critical of Trudeau's book on some points, but nevertheless ends with a wonderful commendation: "The best part of Trudeau, besides his technical competence, is his love of liberty: he is prepared to run risks as well as claim its advantages. A remarkable personality has been revealed."

In 1965 Trudeau, along with Marchand and Pelletier, joined the Federal Liberal Party and were elected two months later. They believed they could make their greatest contribution to French Canada in the Canadian Parliament, but Trudeau especially, was never forgiven by the nationalists.

Yet when Laurendeau's best writings, entitled "Witness for Quebec", were published in 1973, the collection contained, *in toto*, the three editorials on Trudeau. Claude Ryan, a lifetime protagonist of Trudeau, wrote an incisive, eight-page preface to the Laurendeau text and spent two of those pages on Laurendeau's Trudeau editorials. Ryan, to his credit, also ended his remarks on Trudeau with Laurendeau's tribute - "A remarkable personality has been revealed." ■

Trudeau, born October 18, 1919, died September 28, 2000: P.M. from 1968-1979 and 1980-1984.

See André Laurendeau, "Witness for Quebec", Essays selected and translated by Philip Statford, Introduction by Claude Ryan, MacMillan, 1973 at pp. ix & xi (Ryan) and pp. 161 & 171 (Laurendeau)

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Disability, Discrimination, and Social Exclusion

by Margo Plant (Law IV)

Faithful Quid readers will no doubt have noticed that a fair number of articles in recent issues have been inspired by the Law and Poverty seminar course being offered this term. This article is a continuation of that series and pertains to the class' discussion on the subject of disability, discrimination, and social exclusion. Specifically, the discussion centered on the Supreme Court of Canada's decision in *Auton v. British Columbia* [2004] 3 S.C.R. 657 which was analyzed by reference to two articles: Jenny Morris, "Social Exclusion and Young Disabled People with High Levels of Support Needs," and Ena Chadha & Laura Schatz, "Human Dignity and Economic Integrity for Persons with Disabilities: A Commentary on the Supreme Court's Decisions in Granovsky and Martin."

Auton involved an action against the province of British Columbia, alleging that its failure to fund applied behavioral therapy for children suffering from autism violated s. 15(1) of the Canadian Charter of Rights and Freedoms. The lower courts accepted that this therapy was medically necessary and held that the failure to fund this service, while providing medically necessary services to non-autistic children and mentally disabled adults, constituted discrimination against autistic children. This discrimination was not justified under s. 1 given the potential benefit that autistic children might derive from the treatment. In consequence, the government was ordered to fund the therapy.

The Supreme Court of Canada reversed this decision in a unanimous judgement. The court's decision rested on the previously unelaborated notion of 'provided by law.' The court stated that the specific role of s. 15(1) is to ensure that when governments choose to enact benefits or burdens, they do so in a non-discriminatory manner. In consequence, s. 15(1) equality claims are limited to those benefits and burdens that have been imposed by law. In a formalistic analysis of the relevant legislation, the court found that the benefit in question was not provided by law, notwithstanding its medical necessity. The Canada Health Act conferred funding for core services delivered by medical practitioners, while the provincial health care legislation provided funding for non-core services provided by designated 'health care practitioners.' Since applied behavioral therapy was delivered by therapists who were not medical practitioners and who had not yet been designated by the province as 'health care practitioners,' the benefit was not 'provided by law.'

Although this conclusion was sufficient to dispose of the case, the court went on to find that the legislative scheme would not itself be discriminatory in providing funding for non-core services to some groups while denying funding for applied behavioral therapy for autistic children. This was based on the fact that the legislative scheme was only intended to be a partial health plan and did not aim to meet all medical needs. The court further concluded that there was no evidence to suggest that the government had excluded autistic children on the basis of disability. The appropriate comparator group was identified as non-disabled persons or persons suffering from a disability other than a mental disability who seek or receive funding for non-core therapy that is important for their present and future health, is emergent and has only recently been recognized as medically required.

The Supreme Court of Canada's decision in *Auton* sets clear limits on the Charter's equality provisions as a mechanism for challenging government spending priorities, and substantially undermines the remedial purpose s. 15 in relation to persons with disabilities. A sharp distinction was drawn between cases where there is unequal access to a benefit conferred by law and those where the benefit has not been so conferred - only in the former case will the Charter's equality provisions protect historically disadvantaged groups. Thus, the petitioners in *Auton* could not rely on the notion of substantive equality which had been advanced in *Eldridge* (government required to provide sign language interpretation for the deaf in provision of medical care) in order to force the government to provide services to accommodate their disability related needs.

In *Eldridge*, the SCC adopted a socio-political model of disability that focuses on systemic discrimination and the notion that disability is created by the social, political, physical and cultural barriers created by society. The formalistic approach of the Supreme Court in *Auton* has the effect of discounting systemic discrimination to the extent that this discrimination is embodied in a failure to enact legislation designed to meet the needs of disabled individuals. The lower courts had accepted expert ▸

evidence to the effect that early intensive behavioral therapy is the only chance that autistic children have to mitigate the devastating physical, emotional, social and intellectual isolation which stems from their condition. It was also accepted that there is no effective alternative therapy for these children. Given the reality that the health care system funds services to address much less serious conditions, it must be acknowledged that there may well be an element of systemic discrimination underlying the government's funding decisions.

The article by Morris sheds some light on the nature of this systemic discrimination. Morris questions the narrow interpretation of social exclusion that underpins current policy - specifically, that the government's focus on integration into the labour market ignores the more fundamental factors that create dependency and social isolation. The author explains that, for disabled youth with high support needs, social exclusion is about being denied their human rights: their right to be a part of their community, to be free from prejudice, to communicate with others, and to have choices in their lives. Since the majority of autistic children will end up in group homes or other residential facilities and will likely never be part of the workforce, the government's reluctance to fund intensive behavioral therapy may well have been informed by a similarly narrow interpretation of social exclusion. In order to challenge the inevitability of the link between non-participation in the workforce and social exclusion, Morris advocates a human rights approach. Sadly, the Supreme Court's decision in *Auton* renders the Charter's equality provisions impotent to address many of the systemic causes of dependency and isolation experienced by persons with disabilities. This social exclusion surely goes to the root of human dignity, and yet the Charter does not provide a means of redress.

Chadha & Schatz, for their part, criticize the Supreme Court's decision in *Granovsky v. Canada* and describe how s. 15 of the Charter proved ineffective in attaining substantive equality for persons with temporary or intermittent disability seeking benefits under the Canada Pension Plan. The authors claim that the 'essential human dignity' test embodies an economic understanding of disability and thereby perpetuates the economic inequality of persons with disabilities. They conclude that the SCC's decision in this case implies that economic inequality alone does not offend human dignity, despite the fact that this is one of the most oppressive forms of discrimination experienced by persons with disabilities. The authors discuss the malleability of the s. 15 analysis and illustrate how insidious and pervasive stereotypes about persons with disabilities may inform judicial decision-making.

Similarly, it could be argued that insidious and pervasive stereotypes about people with disabilities informed the limits which the Supreme Court of Canada has set on equality rights as a mechanism for challenging government policy. The SCC's decision in *Auton* sends the message that it is not discriminatory to continue to exclude children with autism from participation in society. By characterizing applied behavioral therapy as a non-core service on the basis that it was not provided by a medical practitioner, the SCC effectively belittled the fundamental importance of this therapy in providing autistic children with a chance at greater social integration. Furthermore, by choosing the provision of novel therapies to non-disabled persons or persons with a different type of disability as an appropriate comparator, the SCC ignored the broader picture. Rather than characterizing applied behavioral therapy as a novel therapy, it might more accurately be equated with the social behaviors acquired by other children during the course of their daily interactions at school and in their community. Substantive equality for children with autism requires that they be given a chance to participate in society in the same manner as their non-disabled counterparts.

In light of the limitations of the Charter for challenging government funding priorities, advocates will need to explore other means of addressing systemic inequality for persons with disabilities. It is crucial, for example, that persons with disabilities be involved in policy development and the elaboration of programs that are intended to meet their needs. ■

The forgoing article reflects a discussion that took place in my Law and Poverty class.

Hey you with that can or bottle! Walk those extra few steps past the garbage to the recycling bin and prove you're smart enough for both law school and recycling!
Envirotip brought to you by: ELM

Virée de hockey: la langue qu'on parle

Par Laurence Bich-Carrière (Law II)

"So I say go and enjoy yourselves...and maybe write an article to the Quid about it?" Bien sûr, ma chère Lindsey, en bonne étudiante bien impliquée et reconnaissante, je vais te narrer longuement comment j'ai habilement conjugué des billets 112 DD (la quatrième rangée, en face du banc du Canadien, dans le genre "laisse tomber la feuille avec les correspondances noms des joueurs/numéros, on peut voir la couleur de leurs yeux" -disons que ça va me prendre quelques années de partnership dans un gros cabinet avant d'avoir des billets comme ceux-là) et un paper de mi-session (ça semble une thèse, à la limite un conseil, mais c'est un leurre -et ça me donne bonne conscience).

Donc. Arrivons (suivez le troupeau du métro au Centre Bell, c'est encore ce qu'il y a de plus efficace). Assisez-vous (comme le commandera au moins douze fois une mère à ses moutards). Hymne national interprété par un flo de huit ans avec le gabarit d'un sourisseau mais une voix célinedionesque (il a d'ailleurs fait la une de la Gazette). Zamboni® (si je pouvais faire un tour de surfaceuse, je serait certainement plus excitée que les kids qui y avaient droit). Pitounes déguisées en arbitre (personne ne les a huées, celles-là, même si l'une avait des patins de fille) et grand slack sur une voiturette Molson stallant par moments qui garrochent des T-shirts dans la foule avec des guns à air.

Joie! Délice! Régal des yeux! J'ai devant moi un vrâ fan. Ça compte au moins pour la moitié du show (c'est un spectacle, n'en disconvenez pas). Je ne parle pas de ces ersatz de supporters qui croient qu'arborer une tuque à pompon tricolore et un chandail des Habs à domicile suffit, ni de ces tendrons qui hurlent à chaque fois que des gros goons font shaker la vitre en Plexiglas® en s'y plaquant gratuitement.

Non, un vrai, hardcore, le genre à faire des poupées vaudous à l'effigie de Miroslav Satan (ça se prononce "Shatane", mais ça permet quand même ben des jokes) qui a compté, et deux fois plutôt qu'une.

Remarquez, c'est chacun ses occupations d'entracte. Pendant que le chanceux qui hockeyait sur mes billets clope et essaie de cellulairement déterminer quel sera notre plan de match post-game (le jeu de mots est fortuit), je sors le brouillon de mon take-home que je corrige en me surprenant à fredonner les refrains diffusés dans l'aréna (soit dit en passant, mon dernier passage au hockey remonte à 1998 et les chansons sont exactement les mêmes, Survivor en sus), les pieds sur le siège des spectateurs devant moi, ces sacrilèges qui ne reviendront pas après la première mi-temps.

Je vous épargne la morne deuxième période, d'autant que je n'en retiens rien, sinon qu'elle s'est terminée sur une égalité et que le quatorze-ans-chevelu derrière moi m'a aspergée de son fond de Coke® qu'il sirotait bruyamment en se levant dans un de ces moments de liesses populaire qui se mue en injures dès que le ref exprime la nullité d'un but (ça sonne juriste, ça, comme proposition) des Glorieux. Quand je lui montre gentiment ma main bien mouillée, il me regarde et se demande probablement "Pourquoi elle me fait des tatas la madame?". Son voisin le semoncera: "You idiot, you spilled your Coke on her!" "That can't be, the bottle's empty" "That's because it's on her!".

Enfin. Le match continue. Bégin glisse comme s'il jouait au baseball (parlant de baseball, Youppi en chandail des Canadiens, c'est pas siiiii catastrophique comme mismatch). Un but du CH, mais l'avantage est de courte durée, Théo laissant passer une balloune ('paraît qu'il s'assoit sur ses lauriers, ayant signé pour trois ans, mais je n'irai pas plus loin, ne tenant pas particulièrement à faire dodo dans le fleuve avec des pantoufles en béton).

Rouge tomate, le fan-numéro-un frise la crise d'apoplexie: "Awaye, fly! Skate mon estie, go, go, go, fesse-les Sâku, mon champ!". Ces exhortations porteront-elle fruit?

Trois minutes de la fin.

Les écrans numériques indiquent trois-trois.

Comme un seul homme (n'en déplaise à la conceptrice graphique de l'excellente couverte du spécial La vie en rose, le hockey demeure plutôt masculin, voire néanderthalien, dans ses mouvements collectifs), la foule est au bout de son siège.

Et c'est le but!

Une victoire de dernière minute, que demander de plus?

La morale, vous la trouverez vous-mêmes… ■

That's Four for Chico

by Michael Hazan (Law IV)

Chico won its fourth consecutive game as the MBA Slappers went down for the count in a 5-0 contest last Monday night. Captain Casey Leggett led the way with a hat trick but it was "Mighty" Mike Eldridge who stole the show with a stellar performance between the pipes.

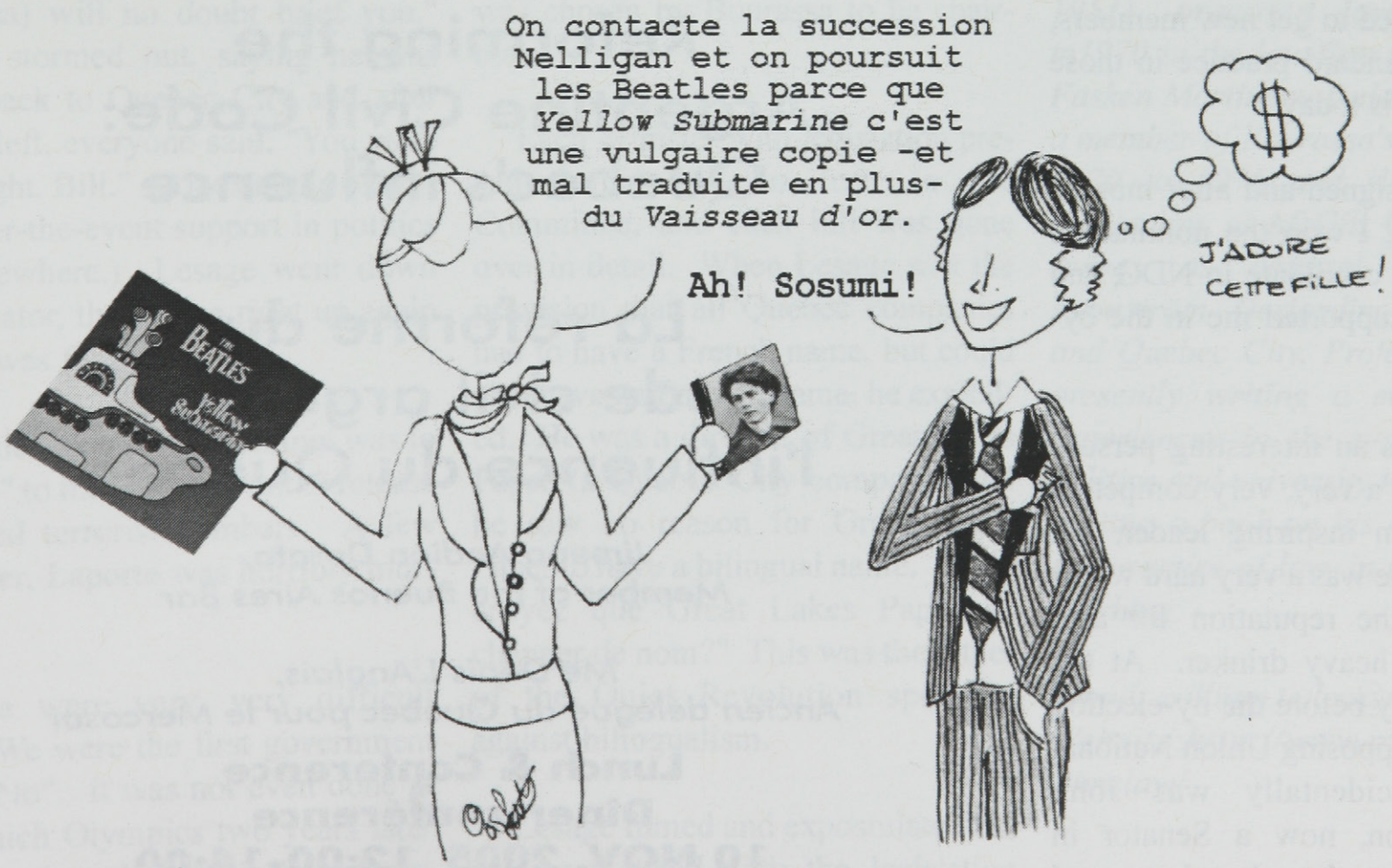
Following in the footsteps of Bob Essensa, Rick Tabaracci and Stéphane Beauregard, the Winnipeg Jets heroes he worshipped in his youth, Eldridge turned away shot after shot and earned his first regular season shutout for Chico. "It was a solid team effort," said a shy Eldridge as he passed his blocker to the representative of the Chico Resch Hall of Fame. Eldridge kept the team in the game after Chico couldn't muster any goals in the first period and had to kill off two penalties thanks to some "questionable" calls on Zanna and Hazan.

It didn't take long for Captain Casey to come to the rescue as he scored his first goal of the game off his own rebound. With Chico on the power-play, Leggett scored again and then added his third off the game by popping in yet another rebound. However, his lead in the race for the Rickford Award was short-lived as Nat "Dutch" Brand replied with 2 goals to take the team lead in scoring. "Leggett - You are going to have to rip that trophy from my cold, dead hands," roared Brand after he fired a shot passed the MBA goalie. Bob "The Mountain" Moore sits in a close third place with 4 goals.

Fred "La Flash" Desmarais was solid on defense taking over for the MIA Ian Osellame and Ken McKay. Will "The Thrill" Darling and "Giant" Geoff Conrad logged a lot of ice time and were both +3 on the night. With only 8 guys in the depleted lineup thanks to injuries, a suspension and previous engagements, Chico played hard and maintained its perfect record. Much of the credit belongs to Eldridge, who after a couple of beers in the locker room, went home and climbed into his bed with his trusty Jet comforter and slept very well. ■

Les aventures du Capitaine Corporate America

par Laurence Bich-Carrière (Law II)



«Tous dans le même bateau»

How to be an Elected Politician Without Even Trying (Part I)

by Prof. William Tetley

At some point, for reasons perhaps of glory or of being burned out by private practice, I decided to try to get elected into the National Assembly of Quebec where I thought the action was to be found, rather than Ottawa. In 1966, I tried to win the nomination in my home riding of what is now called Mount Royal, but Jean Lesage chose my friend Jérôme Choquette, who was a vice-president of the Quebec Liberal Party. I became active in the Quebec Liberal Party, became vice-president and when, two years later, Eric Kierans, who was the Member of the Legislative Assembly for NDG, ran for the leadership of the Federal Liberal Party, I decided to work from strength and even before Kieran's resignation bought a triplex in NDG. I installed an office in the basement and then started to woo the members of the NDG Quebec Liberal Association, and campaigned to get new members, which was standard practice in those days and still is today.

Kierans resigned and after months of canvassing, I won the nomination as the Liberal candidate in NDG, and Lesage then supported me in the by-election.

Lesage was an interesting personality. He was a very, very competent lawyer and an inspiring leader, but very proud. He was a very hard worker, but had the reputation for also being a very heavy drinker. At the final giant rally before the by-election in NDG (the opposing Union National candidate incidentally was John Lynch-Staunton, now a Senator in Ottawa), Lesage introduced me and exaggerated my qualities as a fine fellow, a great lawyer and unfortunately added, "I knew him at the Bar", meaning the Quebec Bar Association. The audience started to smile, then tittered and then broke out into unrestrained laughter. Afterwards Jean said to me, "You know that did me good, because it was my pride which lost me the election in 1966."

This was apparently the first time he had confessed (albeit privately) that it was his fault for calling the snap election of 1966, which Lesage had entered, never suspecting that he could lose to Daniel Johnson, Sr. The day of the election, Lesage played golf instead of visiting the polling stations and a reporter asked if he had won on the golf course. Lesage replied: "I always win." A few hours later, Daniel Johnson, although getting fewer votes than the Liberals, had won more seats, mostly in the country ridings. Plus ça change, plus c'est la même chose.

In 1970, the Quebec Liberals won the general election and I went into Bourassa's first Cabinet. In the fall of 1970, the October Crisis took place when the British Trade Commissioner in Montreal, James Cross, was kidnapped and then a week later Pierre Laporte, a Quebec Cabinet minister, was kidnapped also by the FLQ (le Front de Libération du Québec). ▸

We met as a full Cabinet on the question, not as a committee as Trudeau did in Ottawa. We all lived for a number of days in the top floor of the Queen Elizabeth Hotel, where we received messages from the FLQ found in garbage cans. Laporte's family was living one floor below and at one point his young son wrote Bourassa a letter, which read, "Cher monsieur Bourassa: Sauvez la vie de mon père."

It was a very tense period and Bourassa consulted, as was his practice throughout his career, all sorts of people, including Lesage.

Lesage turned up at the hotel at the end of a Cabinet meeting, when only a few of us were sitting around. He barged in and said: "Now brief me." No one said anything and finally I, with my usual regrettable outspokenness, said: "We can't of course say what was decided in Cabinet, Mr. Lesage, but Robert (meaning Bourassa) will no doubt brief you." Lesage stormed out, saying he was going back to Quebec City and after he had left, everyone said: "You were quite right, Bill." (An example of typical after-the-event support in politics and elsewhere.) Lesage went down the elevator, then came right up again and all was forgotten.

The decision of our Cabinet was to say "No" to the FLQ and not to release convicted terrorist bombers. A few days later, Laporte was horribly murdered.

These were very, very difficult times. We were the first government to say "No". It was not even done at the Munich Olympics two years later and in various kidnappings and airplane hostage takings, all over the world. Years later, Henry Kissinger acknowledged that we had acted properly and added that he had advised us to do so. I doubt that he so advised us.

I seemed to have constant clashes with Lesage, although I admired him so much. One classic occasion was when, as Minister of Financial Institutions, I brought down an amendment to the *Companies Act*, to the effect that all companies must have a French name, but could also have an English name, and either name could be used.

Lesage was a member of the legislative committee named by Bourassa, which met every Tuesday night under the direction of the Minister of Justice. Jérôme Choquette, who was Minister of Justice, could not abide Lesage's overbearing attitude and therefore refused to act as chairman, despite the benefits of Lesage's encyclopedic knowledge of the law. In consequence, Gérard D. Lévesque, the Parliamentary leader, was chosen by Bourassa to be chairman.

Each Minister with legislation presented his bill in turn to the Committee, and each bill was gone over in detail. When Lesage saw the provision that all Quebec companies had to have a French name, but could also have an English name, he exploded. He was a director of Great Lakes Paper (a Quebec City company) and he saw no reason for Great Lakes Paper to have a bilingual name. "Vous croyez que Great Lakes Paper va changer de nom?" This was the father of the Quiet Revolution speaking against bilingualism.

Lesage fumed and expostulated but we went ahead with the legislation anyway. Great Lakes Paper added a French name and no one was struck dead by a bolt of lightning from heaven or from anywhere else.

The language provision was a good one and in fact represented the protection of the French language, while at the same time, respecting the English language.

I used the same linguistic formula in the *Consumer Protection Act*, to the effect that all consumer contracts had to be in French but could also be in English, and if bilingual (which was the purpose of the provision), the text that favoured the consumer would prevail.

I believe that these were the two first successful language laws in Quebec. They were a great success, because they promoted bilingualism.

(To be continued in the next issue...) ■

William Tetley, Q.C., LL.L (Laval 1951), practised law from 1952 to1970 in the law firm now known as Fasken Martineau DuMoulin. He was a member of Bourassa's Cabinet from 1970 to 1976 and since then has taught law at McGill University. He serves as counsel to Langlois Kronström Desjardins in Montreal and Quebec City. Professor Tetley is presently writing a memoir of his experiences in the practice of law, politics and university teaching. He is writing a book on his experiences in the practice of law, in politics and in teaching.

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Best Served Cold - Is Retribution Becoming Harder To Swallow?

by Alex Campbell (Law III)

When Shylock asks for his pound of flesh, he is rebuked by the Christian court for being unmerciful. The "quality of mercy", says Portia, is without limits. Mercy, she continues, blesses twice, blessing both the object of mercy and the person who bestows it. Chastising Shylock's effort to have the letter of his contract upheld, Portia addresses her plaintiff saying, "Though justice be thy plea, consider this,/ That, in the course of justice, none of us/ Should see salvation: we do pray for mercy…."

Anyone familiar with *The Merchant of Venice* and its controversies knows that it is a play about religion, especially about the clash between Old Testament eye-for-an-eye retribution and New Testament turn-the-other-cheek long-suffering. Portia rebukes Shylock in religious terms which do not belong in a criminal law discussion about the aims of punishment. The arguments of Portia's court do have secular counterparts, however, and the debate about the place for retribution in the criminal law is very much alive today.

The More I Learn About You, the More You Seem Like Me

Portia appears to advocate a kind of self-interested mercy. If evaluated fairly, none of us sinners would pass St. Peter's gate; thus, we had better believe in mercy and demonstrate some ourselves. Through this reasoning, she aligns the interests of Shylock with Antonio and attempts to inspire a

SEX WORKERS IN CANADA - What is being done about it???

Renowned speaker and intellectual in the area of sex workers, Jenn Clamen, will be coming to speak at the Faculty this week. Jenn Clamen is currently the coordinator of Forum XXX at Stella - a unique community organization that promotes the decriminalization of sex work. Given the proposed legislative reforms on prostitution in Canada, her speech promises to provide an interesting perspective on the current debate surrounding the reforms. Among other achievements, Jenn Clamen is best known for her work in the UK, establishing the first sex worker's union in England. She will be discussing her work at Stella and her views on the sex trade in Canada.

When: Wednesday, November 2nd
Where: Room 201
Time: 12:30pm - 1:30pm

Presented by the McGill Law Women's Caucus, sponsored by the LSA and SSMU.
For more information, feel free to contact emily.myer@mail.mcgill.ca
Many Thanks to our Sponsors…

merciful abandonment of the contract.

Retribution seems most acceptable when one can see the convicted as both evil and alien. In an era of social sciences, however, we are learning more and more about the forces acting on the individual. The deviance, in sociological language, of our neighbour becomes less the expression of any personal essence, and more the natural and logical outcome of that person's circumstances, internal and external. Increasingly, we are exposed to literature documenting how others' psychological, socio-economic and general life experiences affect their behaviour. In theory, this ever-growing body of research is morally neutral and seeks to explain and understand rather than ostracize.

Unlike deterrence and rehabilitation, retribution only works as a justification for punishment if we can see the punished as a bad person. This is the reason we do not punish the person who commits a crime involuntarily, such as he or she who assaults another while having an epileptic seizure. However, the more we understand the behaviour of the person under the legal microscope, the harder it is to claim that he or she is categorically "bad". In fact, the more we seek out the story behind criminal behaviour, the more we wonder what our own behaviour might be under different circumstances.

R. v. Hamilton and the Future of Retribution

Are we about to witness the execution of retribution, similar to that in Portia's courtroom? Canadian courts have been interpreting s.718.2 (b) of the Criminal Code to permit a consideration of the social circumstances of the accused and to justify softer sentences for members of historically disadvantaged groups. In *R. v. Hamilton*, Justice Hill of the Ontario Superior Court interpreted s.718.2 (b) broadly and was lenient in the sentencing of two black women charged with importing cocaine from Jamaica. Before imposing upon the accused conditional sentences of under two years each, Justice Hill noted, "Offenders like those before the court are subject to both the systemic economic inequality of women caring on their own for young children and the compounding disadvantage of systemic racism securing their poverty status."

When retributive justice seems distasteful, we may look to other aims of punishment to justify the sentencing of an accused. Will prison time rehabilitate? Will punishment deter this person or other people from committing similar crimes? Often, however, it appears that retribution is the only real basis for punishment. For example, rehabilitation is unlikely in the case of two disadvantaged women charged with drug smuggling who will face the same social pressures after their release as they did before their incarceration. Expert testimony in *R. v. Hamilton* indicated that it is only certainty of punishment, and not severity, which really deters criminal behaviour. People who commit crimes are not planning on getting caught. Thus, the difference between two and five years in jail will not tip the balance in anyone's decision to commit a crime.

Though the Ontario Court of Appeal criticized Justice Hill's judgment on a number of grounds, it is worth asking whether his kind of analysis represents the future of Canadian decision-making. Will the criminal law become more comfortable with seeing criminal events in a social context? Will legal reform move the criminal law away from minimum sentences and toward greater sympathy in sentencing for those unlucky in life's lottery? These possibilities pose enormous challenges for the criminal legal system, particularly in the area of evidence. Are we going to add "sad" to the "mad/bad" quandary?

Reinforcing Stereotypes by Creating the "Helpless Case"?

Some would argue that decisions like Justice Hill's are not actually merciful at all, but rather establish expectations that members of particular disadvantaged groups will fail, thus creating a self-fulfilling prophecy. However, the sad truth of the matter is that courts adopting a Justice Hill approach are operating in a system already saturated with negative expectations for members of certain minority groups. In a society where the term 'DWB' (Driving While Black) has become a fairly familiar commentary on police conduct, judicial acknowledgement of societal inequalities cannot do much damage that has not already been done. Perhaps it would do some good. ■

The foregoing article reflects a discussion which took place in my Law and Poverty class.

Why the Reasonable Man Probably Knows About Avenged Sevenfold

by David Perri (Law IV)

I'd like to respond to Amanda Glover's article entitled "The Reasonable Man" found in October 25th's Quid. In her commentary, Ms. Glover described who she perceives the reasonable man to be. As a first year student, Ms. Glover is probably learning about the elusive reasonable man in Torts and, consequently, is wondering about the reality of this legal fiction. Who can blame her? When I took Torts back in year one, I tried to figure out the successes and failings of Mr. Reasonable, too. I'm sure we all did.

So, everything is cool on that front. However, I take issue with the not so subtle message behind Ms. Glover's reasonable man character sketch.

Though her article was well-written and encapsulated a great deal of what law school considers "sensible", Ms. Glover's description of the reasonable man (let's call him Lars, shall we?) was elitist and symptomatic of the intellectual pretension that runs rampant in the faculty. Ms. Glover's article stated that Lars "has worked for other people his entire life and fulfills a mind-numbing occupation". Further, our pal has "more than one whoopie cushion" and is as "politically correct as a Monty Python sketch". Finally, Lars "has no desire to ponder philosophical dilemmas - if you were to mention Immanuel Kant to him, he would stare blankly and ask, 'Who does he play for'?"

Wow. I've got to say, I'm truly sur-

prised and even just a bit offended by these statements. As lawyers, our goal is to examine real problems and provide tangible solutions for ordinary citizens. The ivory-tower posturing displayed by Ms. Glover indicates that unfortunately the law is still predominantly viewed as an entrance into the halls of some prestigious firm. That attitude screams, "Fuck the little people, I've got two law degrees! I am so utterly and wholly better than you."

More than anything, I'm just really put off by the elitism that soaked Ms. Glover's portrayal of Lars. Do law students really think that the reasonable man fits such base stereotypes? Does everyone in the faculty underestimate non-law individuals as much as Ms. Glover does? Has Ms. Glover ever even associated with people who aren't academically inclined or not on their way to a bright, successful future as pretty much all of us here are? Just because one isn't educated doesn't mean one isn't smart or insightful. Not being able to distinguish between the civil and common law doesn't make you a hick which, quite frankly, is what Ms. Glover's reasonable man description infers.

My undergrad degree was in Political Science with a minor in Philosophy. That, evidently, means I took a lot of philosophy courses. More than three years removed from undergrad convocation, however, I'd be hard-pressed to still discuss Kant with any kind of vigor or certainty. Even old favorites like Hume, Heidegger and Kierkegaard (whom I once wanted to name my first born after, incidentally) have been pushed into the annals of past academia. What concerns me most right now -- as someone staring employment right in the eye come January -- is effective contract drafting and successful contract interpretation. Does that make me some kind of intellectual void? Am I now relegated to wearing I'm With Stupid t-shirts (as opposed to the ultra rad Hatebreed hoodie I'm currently sporting) as Ms. Glover ascertains in her commentary?

Articles like Ms. Glover's remind me of this punk band called Propagandhi. Over the last couple of days, I've tried to become more familiar with the group (based on the recommendation of a colleague). Aside from just being in the band, Propagandhi's members also run a record company called G7 Welcoming Committee. As the band and record label monikers probably imply, these Winnipeg malefactors are ultra-leftists out to promote their message(s) via their music. At Propagandhi's outset back during the '90s, the collective used to lecture audiences at their shows in hope of waking consciousness in the 16 year-old kids that had ventured to check out the band. And you know what? The strategy didn't work. People don't respond to that kind of preachy arrogance; they're turned off by it. It's why Propagandhi now lets the music do the sermonizing and keeps the Chomsky-inspired rants to a minimum during their sets. The band learned not to talk down to people, and probably sold more merch because of it.

So, what does Propagandhi's attitude have to do with the reasonable man? Well, thinking you're intellectually superior and able to denigrate the average person is just as bad as the members of Propagandhi believing they were among the select chosen few to awaken left-wing consciousness in a bunch of kids who probably went back home to the suburbs and ate Pop Tarts after the show. Ms. Glover and Propagandhi's I-see-things-uneducated-people-can't stances are representative of exclusionary attitudes, attitudes that spread all too easily. In the end, Ms. Glover making Lars out to be a one-dimensional beer-guzzler is just veiled condescension, plain and simple.

In my world, the reasonable man, Lars, probably has a reasonable son, Bjorn, who watches too much Musique Plus and as a result now listens to the oh-so-addictive Avenged Sevenfold. I don't judge Bjorn for buying into the Nikki Sixx aesthetic of Avenged Sevenfold, just like I won't criticize Lars for not introducing Bjorn to The Smiths. Those are choices they've made. But I will never assume either of them is shallow and vapid enough to listen to Nickelback. That's a kind of elitism I've got a natural visceral reaction against. ■

The Square: An Outsider's Look at the Hippest City in Canada

by Nicholas Dodd (Law I)

I'm beginning to identify Montreal with one sensation - being wet. From what I've observed over the past fortnight, it seems that someone forgot to note down in the orientation materials that the McGill campus would be moving out to the coast for the year. That's the only explanation I can find for the fact that, almost everyday without fail over the last two weeks, I've been sitting in class with wet socks, wet pants, or, in the worst instance, wet undergarments. You try understanding the difference (or lack thereof?) between real and personal rights in civil law property with cold water swishing around in your shoes. I am told this weather is abnormal but that then begs the question … what about Montreal is?

Which brings me to my next point - the scary parallels between the manic pace of cultural life in Montreal and the rate at which my school load is spiraling completely out of control. Now, a determined procrastinator can always find reasons to avoid pressing tasks. This is true whether they live in Calgary, Regina, Toronto, Montreal or, heavenly powers forbid, the suburbs. The problem is when these potential sinful delights are so ubiquitous, and of such high quality, that you begin to wonder whether it may not be worth it to visit this movie/show/art exhibit etc. on its own merits rather than for the pure anything-but-my-homework aspect of it all. Montreal poses such a problem for many a would-be lawyer, and as us naïve first years begin to adjust to the cold math of the grading curve one must ask themselves whether their time would not be spent out in the city rather than staring out at the intersection of Dr. Penfield and Peel from the third floor of the library. After all, the course summary is all you really need, right? Fortunately our high degree of academic integrity estoppes any such irresponsible activity ….

Another reason I long to be released from the pen that is the Nahum Gelber is to conduct an interesting social science experiment. I want to know how to shock Montrealers. A quick stroll through the streets of this city will prove that it is inhabited by tigers of all sizes, shapes and stripes. No matter how outrageous one acts (talking loudly to the dumpster, dancing in a Spiderman outfit in the middle of the street are but a few examples), or how great/badly/scantily one dresses, it's almost impossible to get people to take a second glance. The attitude of 'anything goes' is so closely embraced (and please don't construe me to be disparaging the situation - I merely find humor in some of its more outrageous results) that it can lead to somewhat odd situations.

Take my roommate's recent experience in trying to rent a hat for his Halloween costume. My roomie is a fairly good-looking guy, perhaps a bit on the muscular side (football player - I know what you're wondering and all I can say is 'no comment') but really just a regular dude (from the outside - we all know he's special on the inside). At any rate, he entered this shop to find a large (read: really large) naval officer's hat for his costume. Finding what he was looking for, he entered the line, hat on head, to complete the contract (unilateral offer to sell mirrored by acceptance…) only to experience some difficulty in actually renting the hat. The employees of this particular shop could not even figure out what of theirs he was trying to borrow, because, in Montreal, it is perfectly acceptable to wear a large white naval officer's hat when running your daily errands. I wish I'd been there, as the Monty Pythonesque (imagine John Cleese and Eric Idle in a shop - How can I help you sir?/ I'm trying to rent a hat/ Well what's wrong with your hat?/ Well nothing, I want to rent it/ You want to rent your own hat!?! and so on …) comedic value of the whole situation can now only truly be appreciated by him.

At any rate, hope your Halloween was full of copious amounts of both tricks and treats. Only a few weeks of term left, so remember to study hard, play harder and enjoy every one of those precious few moments we are allowed in the warm comfort of our beds. ■

Cooking the Books: Ga-taux de dommages

by Lindsey Miller (Law IV)

N'importe quel bon père de famille pourra servir ce gâteau comme *solatium doloris* à la conclusion des examens, ou bien pour régler les troubles de voisinage. When the stresses of midterm life are threatening to break your thin skull, take a bite of this cake in compensation, and you can pretend the floodgates are not ready to break, after all.

tasses de farine	2 ¼	cups all-purpose flour
tasse de poudre de cacao	2/3	cup cocoa powder
c. à thé de bicarbonate de soude	2	tsps. baking soda
tasse de beurre	½	cup unsalted butter
tasses de sucre	1 1/3	cups granulated sugar
tasses de babeurre	1 ¾	cups buttermilk
c. à thé de vanille	2	tsps. vanilla
tasse de confiture	2/3	cup jam

Préchauffer le four à 180°C. Graisser légèrement deux moules ronds à gâteaux de 20 cm. Dans un grand bol, mélanger la farine, la poudre de cacao, et le bicarbonate de soude. Faire fondre le beurre dans un bol moyen transparent au micro-ondes, à peu près une minute. Fouettez le sucre, le babeurre, et la vanille avec le beurre. Mélangez ensemble le mélange de beurre et le mélange de farine, jusqu'à ce qu'ils soient combinés.

Faire cuire dans le centre du four pendant 30 à 35 minutes, jusqu'à ce qu'un cure-dents ou couteau inséré au centre du gâteau sorte nettement. Laissez les gâteaux dans les moules pendant 5 minutes avant de passer un couteau autour des gâteaux et les renverser sur une grille ou des plats couverts d'essuie-tout.

Preheat oven to 350°F (180°C). Lightly grease two 8-inch (20 cm) round cake pans. In large bowl, blend flour with cocoa and baking soda. Place butter in medium micro-safe dish and microwave on high until melted, about 1 minute. Whisk sugar, buttermilk and vanilla into butter. Gradually stir butter mixture into flour mixture, just until blended (batter will be lumpy). Pour into batter into pans, and use spatula or back of spoon to spread out batter evenly in each pan.

Bake in centre of oven for 30-35 minutes, or until a toothpick or knife inserted into centre comes out clean. Let the cake sit in pans for 5 minutes before running a knife around the edge of the pans, then turn out onto a wire rack, or paper towel lined plates to cool.

To assemble the cake, spread 1/3 cup of the jam on the top of bottom layer of the cake, and the remaining 1/3 onto the bottom of the top layer. Spread a thick layer of Nervous 'Shock'-olate Frosting (recipe on next page) on top of the bottom layer, then place the top layer over the frosting. Spread the frosting over the top and sides of cake.

Keep refrigerated.

Lord Atkin recommends that you share this 'delict'-able cake with your neighbours. Any reasonable person will be unable to find 'fault' with this fudgy layer cake – it is delicious and low in calories!

Nervous 'Shock'-olate Frosting

by Lindsey Miller (Law IV)

This fluffy frosting is a bit delicate and so is owed a higher duty of care. Toutefois, ne négligez pas à battre les blancs d'oeufs avec force majeure, ou ils ne seront pas assez légères.

carrés de chocolat non additionné de sucre	3	squares unsweetened chocolate
blancs d'oeufs, à température ambiante	2	egg whites, at room temperature
tasse d'eau, à température ambiante	1/3	cup water, at room temperature
tasse de sucre	1	cup granulated sugar
c. à thé de vanille	1	tsp. vanilla
c. à thé de crème de tartre	¼	tsp. cream of tartar

You will need a double boiler, or create one by finding a large saucepan and large bowl (can hold at least 5 cups). The bowl should fit partially within the saucepan, but leave at least a 2-inch gap between the bottom of the bowl and bottom of the saucepan.

Separate the eggs and leave the egg whites to warm to room temperature (about an hour).
Chop chocolate and microwave in a small microsafe dish at medium temperature for 2-4 minutes, until just melted, stirring frequently. Let stand to cool to room temperature.

Fill the saucepan with about 2 inches of water and bring to a boil. Place egg whites in the bowl, and, using a hand-held electric mixer, beat in water, sugar, vanilla and cream of tartar until frothy, about 1 minute. Reduce heat under saucepan to bring water down to a gentle simmer. Set bowl of egg mixture in saucepan. Beat at medium speed constantly, scraping down side from time to time, for 7 minutes (timing is important). Occasionally lift bowl to ensure water is not boiling – reduce heat if necessary. After 7 minutes of beating, remove from heat. Beat for 4 more minutes. Gently stir in a quarter of the room-temperature chocolate until only a few white streaks remain. Fold in the remaining chocolate until uniformly brown – do not over mix.

Les étudiants d'Innocence McGill tiennent à remercier chaleureusement tous les étudiants de la Faculté pour leur appui sensationnel lors du référendum du 27 octobre. Votre générosité saura garantir que notre groupe pourra continuer às'impliquer activement à la correction d'erreurs judiciaires au Québec. Vous aurez bientôt de nos nouvelles quant à l'organisation de conférences et quant au recrutement d'étudiants additionnels.

Encore une fois merci! -- Les étudiants d'Innocence McGill.

Thank You - Merci

The Student Group of Innocence McGill would like to extend its gratitude to the students at the Faculty of Law for supporting our initiative in the referendum of October 27. Your generosity will help ensure that we can proceed in a responsible and meaningful way to claims of wrongful conviction in the province of Quebec. We also expect you will hear from us again soon with regard to events such as public speakers and recruitment.

Thank you! - The Students of InnocenceMcGill.